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| SECTION 8. |COMPENSATION|

**EffDte: 01/27/1988 MCRT#: 0 Div: D3FD Cav: SecCls:

| 8-1 AVAILABILITY PAY FOR CRIMINAL INVESTIGATORS |(See MAOP, Part 1, 20-28.)|

**EffDte: 08/27/2003 MCRT#: 1293 Div: D3 Cav: SecCls:

| 8-1.1 |Authority

| Availability Pay is authorized by Section 5545a of Title
| 5, United States Code and Part 550 of the Code of Federal
| Regulations. |

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| 8-1.2 |Basic Requirements

| Each criminal investigator whose average of unscheduled
| work hours is certified to be (or certified as expected to be) at
| least two hours per regular workday is entitled to Availability Pay in
| the amount of 25 percent of basic pay. |

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| 8-1.3 |Definitions

| (1) REGULAR WORKDAY is a day during the basic 40-hour
| workweek on which a Special Agent (SA) performs AT LEAST FOUR HOURS of
| work that are not:

- | (a) unscheduled work hours,
- | (b) approved training time,
- | (c) time spent traveling under official travel

| orders, or

| (d) hours of approved leave or excused absence,
| including holidays.

| (2) SA, for the purpose of this instruction, refers to
| any SA or Supervisory SA in Grades GS-10 through GS-15.

| (3) UNSCHEDULED WORK HOURS are hours not part of the 40-
| hour basic workweek during which actual work is performed that has not
| been scheduled in advance of the administrative workweek. To be
| credited as unscheduled work hours, such hours must be in excess of
| the employee's scheduled eight-hour workday or 40-hour administrative
| workweek.|

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| 8-1.4 |Eligibility (See MAOP, Part I, 8-1.6.)

| Within the FBI, Availability Pay applies to all FBI SAs,
| i.e., employees whose positions are classified as Criminal
| Investigator, GS-1811, except:

| (1) Members of the Senior Executive Service;

| (2) Part-time employees; and

| (3) New Agents who have not completed new Agents training
| at the FBI Academy. Availability Pay for new Agents will begin on the
| first day of the first pay period after completion of new Agents
| training.|

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8-1.5 Certification

(1) New Agents - Within ten days of reporting to the first duty station, whether from the FBI Academy or upon reinstatement, a new Agent must sign an initial Availability Pay certification. This initial certification will remain in effect until the next annual certification cycle, at which time the new Agent will recertify and thereafter recertify on the annual cycle. The original AVP certification is to be maintained in a central file in the office. Since these certificates do not constitute permanent records, no serialization is necessary. (See MAOP, Part 1, 8-1.6.)

(2) All SAs - Each year, each SA will recertify that he or she has met and will continue to meet the minimum requirement for eligibility. The original certification will be maintained in the office. The Personnel Policy Unit (PPU), Administrative Services Division (ASD), should be notified by an electronic communication when the certification process is completed. Specific procedures for conducting the annual certifications will be distributed by separate instruction.

(3) Every effort should be made to have each employee sign the certification within the specified deadline. However, if an SA is unavailable to sign the required certification in the time specified because of work requirements, extended leave, etc., written notification must be sent by electronic communication to the Assistant Director, Administrative Services Division, Attn: PPU. As soon as the SA becomes available, the form must be signed and dated by the employee and his/her supervisor and PPU must be advised.

(4) Refusal by an SA to certify as to future availability, unless an exception is granted under MAOP, Part 1, 8-1.13, may result in disciplinary action based upon insubordination up to and including removal.

(5) Certifications will be kept on file in the employee's office one month after the next annual certification is completed.

(6) A new certification will NOT be required if an SA transfers to a different office or otherwise changes supervisors in the middle of a certification period. The certification is deemed to be valid for the entire certification period.

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8-1.6 Payment of Availability Pay

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(1) All eligible SAs will receive Availability Pay in the amount of 25 percent of the employee's rate of basic pay (including any applicable special salary rate, locality pay, interim geographic adjustment for law enforcement officers, and retained pay). Availability Pay will be paid only for periods of time during which the SA receives basic pay.

(2) Availability Pay is paid for all unscheduled work in excess of eight hours in a workday.

(3) Availability Pay continues during paid periods of:

(a) excused absence (such as annual, sick, military leave, or court leave, "administrative" leave, and holidays);

(b) officially approved training, except for initial basic training normally given in the first year as an SA (see, Sections 8-1.4 and 8-1.5(1) above); and

(c) officially approved travel (such as travel for purposes of relocation, investigative assignments, and training); and

(d) temporary duty outside of the SA's official position description (such as details and TDY).

(4) Availability Pay is used to compute:

(a) severance pay;

(b) retirement deductions and benefits;

(c) life insurance premiums and benefits;

(d) Thrift Savings Plan contributions;

(e) workers' compensation benefits;

(f) advances in pay; and

(g) lump sum payments for accrued annual leave.

(5) Availability Pay is subject to the biweekly limitation on premium pay (the greater of 150 percent of the minimum rate payable to GS-15 or the rate payable for Level V of the Executive Schedule; Title, 5, USC, Section 5547(c)) and the aggregate limitation on pay -- an employee's annual pay including base pay, availability pay, night differential, overtime, bonuses, and awards -- may not exceed the annual rate of basic pay for Level I of the Executive Schedule; Title 5, USC, Section 5307 (a)(1).

(6) An SA who receives Availability Pay may also receive:

(a) Night differential for night work that is part of the employee's regularly scheduled workweek;

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(b) Sunday pay for nonovertime hours not in excess of eight hours for each regularly scheduled tour of duty which begins or ends on Sunday;

(c) Holiday Pay;

(d) Scheduled overtime pay, once appropriately authorized.

(7) An SA who receives Availability Pay may NOT receive:

(a) overtime pay, night differential pay, compensatory time, or hazardous duty pay under Title 5, United States Code, Sections 5542, 5543, and 5545, for UNSCHEDULED work hours;

(b) overtime pay under the Fair Labor Standards Act (FLSA); or

(c) annual premium pay for administratively uncontrollable overtime (AUO) or regularly scheduled standby duty.

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| 8-1.7 | Hours Creditable Towards the Annual Minimum Requirement

| SAs will receive credit towards meeting the annual minimum requirement of two hours per regular workday as follows:

| (1) All unscheduled hours actually worked before the beginning or after the end of the regularly scheduled workday (normally 8:15 a.m. to 5:00 p.m.).

| (2) All unscheduled hours actually worked on a day that is the SA's regular day off (normally Saturday and Sunday);

| (3) Out-of-area travel time that meets the eligibility requirements for overtime (or compensatory time) payment under Title 5, USC, Section 5542 (b)(2) and Title, 5 C.F.R. 550.112(g) -- generally travel that results from an event that could not be scheduled or controlled administratively by an agency of the Executive Branch. Only the time the SA is actually engaged in travel is creditable. Once the SA reaches the out-of-area destination (including travel from the airport or other mode of public transportation to the office, first work site, or hotel), any local travel in that area will be credited in the same manner as local travel is credited at the permanent duty station. (See 8-1.8.)

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| 8-1.8 | Hours Not Creditable Towards the Annual Minimum Requirement

| SAs will NOT receive credit towards meeting the annual
| minimum requirement under the following circumstances:

| (1) Time commuting to and from the place of business,
| even if the SA is driving a government vehicle.

| (2) Travel time that does not meet the eligibility
| requirements for overtime (or compensatory time) payment under
| Title 5, USC Section 5542 (b)(2) and 5 C.F.R. 550.112 (g) (see
| 8-1.7(3) above.)|

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| 8-1.9 Computation of Annual Minimum Hours Requirement

| To qualify for Availability Pay, an SA must work an annual
| average of a minimum of two hours of unscheduled work per regular
| workday. The annual average is computed as follows:

|
$$\frac{\text{TOTAL_NUMBER_OF_UNSCHEDULED_WORK_HOURS}}{\text{Total Number of Regular Workdays}} \begin{array}{l} \text{greater than} \\ \text{or equal to} \end{array} \quad 2.0$$

| For example, an SA performs a total of 620 hours of
| unscheduled work in an annual period. In the same period, the SA
| works a total of 200 regular workdays (i.e., days in which at least
| four hours of regularly scheduled work was performed, excluding leave,
| excused absence, approved training, holidays, and approved travel).
| 620 divided by 200 equals 3.1. The SA performed an annual average of
| 3.1 hours of unscheduled work per day, thus exceeding the minimum
| requirement for the payment of Availability Pay. |

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| 8-1.10 Recording Unscheduled Work Hours

| UNSCHEDULED WORK will be recorded on the Attendance
| Register (FD-420 or FD-420a for SAs who TURK) and in the
| Administrative Time Capture System as hours worked, i.e., showing
| sign-in and sign-out times and the number of minutes of
| unscheduled work under the "AVP" column on the FD-420 or FD-420a.
| (This procedure is the same as that formerly used to record AUO.) |

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8-1.11 Failure to Meet the Annual Minimum Unscheduled Work Requirement

(1) FBIHQ will periodically review the unscheduled work hours of each SA to determine whether he/she will be able to meet the requirement for an annual average of two hours' unscheduled work per regular workday. If, at the annual certification or at a time between certifications, it becomes evident that an SA will not be able to perform a sufficient number of unscheduled work hours to meet the requisite annual average, immediate action will be taken to decertify the SA and to suspend Availability Pay. In addition to decertification, the supervisor will review the situation to determine whether or not the shortfall has been caused by the SA's misconduct. If the shortfall is the result of the SA's misconduct, such as

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insubordination in refusing to work the previously certified hours, an adverse action may be initiated under Part 1, Section 13 of the Manual of Administrative Operations and Procedures (MAOP).

(a) PREFERENCE ELIGIBLE - Title 5, USC, Section 5545a(e)(20) provides that involuntary reduction in pay resulting from a denial of certification shall be a reduction in pay for purposes of Title 5, USC, Section 7512(4) pertaining to adverse actions. In addition to the procedural protections described for nonpreference eligible employees below, preference eligible employees are entitled to the procedures and Merit System Protection Board (MSPB) appellate rights delineated in Part 1, Section 13-10, of the MAOP with respect to the imposition of adverse actions such as reduction in pay.

(b) NONPREFERENCE ELIGIBLE - An SA who is not preference eligible who is to be decertified for failure to meet eligibility requirements for Availability Pay will receive the procedural protections applicable to a reduction in pay pursuant to Part 1, Sections 13-13 and 14-4.2, of the MAOP. If only decertification is proposed (that is, no additional adverse action is anticipated), the Deputy Assistant Director - Personnel Officer, | Administrative Services | Division, or his or her designee, may determine that decertification is appropriate and may establish the duration of the decertification. If adverse action in addition to decertification is appropriate, the same authority who imposes the adverse action will determine the duration of decertification. Availability Pay will be suspended beginning the first day of the first pay period beginning after the date of decertification. | The | SA may appeal this determination to the Assistant Director, | Administrative Services | Division, within 30 calendar days after the effective date of the decertification. The appeal should include specific information regarding the reasons why the unscheduled work was not performed and should explain how the SA will be able to meet the requirement by the end of the certification period. (See MAOP, Part 1, 8-1.12.1.)

(2) Failure to perform the required hours of unscheduled work may result in decertification and suspension of Availability Pay alone or in decertification plus adverse action based on insubordination, inattention to duty, or other misconduct. The duration of decertification may be from one pay period to one year, depending on the circumstances and degree of the unscheduled work hour deficit. The penalties applicable to misconduct such as insubordination and inattention to duty are prescribed in Part 1, 13-13, of the MAOP.

(3) The length of an employee's suspension from receipt of Availability Pay is an administrative determination at the discretion of FBI management. It will be dependent upon a variety of factors to include: the number of unscheduled work hours the SA failed to perform during his or her period of certification; circumstances contributing to that deficit of unscheduled work; the SA's past record of performing unscheduled work; and other mitigating circumstances that may be present. In situations in which an SA has been previously decertified and/or disciplined for failure to perform unscheduled duty, progressively more stringent disciplinary measures

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may be employed. (NOTE: If an SA is a preference eligible veteran, he or she will be afforded the procedural protections attending that status.)

(4) The Administrative Services Division will issue an SF-50, Notification of Personnel Action, documenting a suspension (involuntary temporary termination based on misconduct) or discontinuance (voluntary temporary termination based on personal or family hardship) of Availability Pay. The SF-50 will include the reason for the suspension or discontinuance, the effective date for cessation of Availability Pay, and the date the suspension or discontinuance ends.

(5) Suspension of Availability Pay does not relieve an SA of the requirement to perform unscheduled work during the period of such suspension.

(6) When Availability Pay is suspended as a result of an SA's failure to perform an annual average of two hours or more of unscheduled work per regular workday, one determinant of the length of the period during which Availability Pay will be suspended is the number of hours of unscheduled duty which the SA failed to perform during the previous period of certification. To achieve eligibility for recertification, an SA will be required to complete his or her period of suspension AND satisfy the requirements set forth in (a) and (b) below--

(a) SATISFACTION OF DEFICIT: A period of suspended Availability Pay must continue until the SA has performed the amount of unscheduled work which he or she failed to perform during the previous certification period. However, the period of suspension may exceed the period required to make up for the deficit.

EXAMPLE 1: An SA worked 200 regular workdays during the previous certification period, but performed only 300 hours of unscheduled work, for an annual average of 1.5 hours of unscheduled duty per regular workday (300 divided by 200 = 1.5). Because the SA had been previously certified as eligible for Availability Pay, he or she received Availability Pay throughout the certification period, despite the fact that he or she failed to satisfy the unscheduled work requirement. The SA would have had to perform an additional 100 hours of unscheduled duty during the certification period to satisfy the requirement to perform an annual average of two hours of unscheduled work per regular workday. (200 regular workdays x two hours of unscheduled duty per regular workday = 400 hours of unscheduled duty; 400 hours of unscheduled work required - 300 hours of unscheduled duty actually worked = a deficit of 100 hours of unscheduled duty.) In this case, the period of suspended Availability Pay MUST continue until the SA has performed at least 100 hours of unscheduled duty during such period.

(b) SATISFACTION OF TWO-HOUR AVERAGE OF UNSCHEDULED DUTY PER REGULAR WORKDAY: An SA who has been suspended from receipt of Availability Pay must perform an average of two hours of unscheduled duty per regular workday during the period of his or her suspension to be recertified as eligible to once again receive such

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pay. ALL UNSCHEDULED WORK performed during the period of suspended Availability Pay will be considered in determining whether the two-hour per-day average has been achieved.

EXAMPLE 2: An SA was suspended from receipt of Availability Pay based upon a deficit of 100 hours during 200 regular workdays, having averaged 1.5 hours of unscheduled work per regular workday. Within 50 regular workdays after the beginning of the suspended Availability Pay, the SA has performed a total of 100 hours of unscheduled work. He or she has thus satisfied the deficit requirement. Once the SA's period of suspended Availability Pay has run and the SA has satisfied the two-hour average requirement, the SA will be eligible for recertification and resumption of Availability Pay.

EXAMPLE 3: An SA with a deficit of 100 hours of unscheduled work during a certification period is suspended from receipt of Availability Pay for a period of 30 days, which includes 22 regular workdays. During the 30-day suspension, the SA performs 75 hours of unscheduled work. Although at the completion of the initial period of suspension the SA has satisfied the requirement to perform an average of two hours of unscheduled duty per regular workday, he or she has not satisfied the requirement to perform an amount of unscheduled duty equal to or greater than his or her prior deficit. Consequently, he or she will not be eligible for recertification and resumption of Availability Pay until he or she satisfies that deficit by performing an additional 25 hours of unscheduled work.

(c) Failure to perform unscheduled work during the period of suspension from receipt of Availability Pay as required above may result in further disciplinary action.

(7) At the completion of the period of suspension, a review will be made to ensure that the SA has met the requirements for recertification and resumption of Availability Pay. When the SA has been determined to be so eligible, the SA and his or her supervisor must again certify that the SA will perform an annual average of two hours of unscheduled work per regular workday in accordance with the certification procedures required by applicable instructions.

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| 8-1.12 Suspension of Availability Pay|

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| 8-1.12.1 Suspension for Health or Physical Reasons

| (1) If an SA is unable to perform unscheduled work for an extended period of time for physical or health reasons, and he or she declines to request voluntary discontinuance of Availability Pay (see

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| MAOP, Part I, 8-1.13), payment may be suspended by the Deputy
| Assistant Director-Personnel Officer, upon written request by the
| division/office head, until the SA's physical or health problems have
| improved to where unscheduled work may be resumed. Such suspensions
| are considered to be involuntary reductions in pay and adverse action
| procedures must be followed. (See MAOP, Part I, 8-1.11, paragraphs
| (1)(a) and (b) above.)

| (2) Workdays in which Availability Pay has been suspended
| under this section will be excluded from the computation of the
| minimum hours requirement.

| (3) The Deputy Assistant Director-Personnel Officer must
| be informed in writing when the SA is again available to perform
| unscheduled work and Availability Pay is to be resumed.

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| 8-1.12.2 Suspension for Alcohol-Related Misconduct (See MAOP, Part I, 13-13.)

| (1) Whenever an SA is suspended from operating a
| government motor vehicle as a result of alcohol-related misconduct and
| following a determination of such misconduct by the Bureau, he/she
| will not be considered eligible to earn premium compensation, such as
| Sunday pay, holiday pay, night differential, and Availability Pay.
| Prior to discontinuing eligibility for Availability Pay, the employee
| will be afforded appropriate adverse action proceedings. (See MAOP,
| Part I, 1-3.1 and 1-30.3.)

| (2) As the suspension of an SA's entitlement to earn
| Availability Pay compensation is an adverse personnel action, it is
| dependent upon completion of adverse action procedures set forth in
| MAOP, Part I, 13-14. These procedures are designed to afford
| employees due process as well as procedural entitlements which arise
| from an employee's personnel status. For example, a preference
| eligible veteran has specific procedural entitlements which are set
| forth in MAOP, Part I, 13-10.

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8-1.13 Discontinuance of Availability Pay (See MAOP, Part 1, 8-1.5 & 8-1.12.1.)

The statute establishing Availability Pay and the
implementing OPM regulations make payment mandatory to all criminal
investigators (i.e., SAs), except under certain limited circumstances.
The rationale for this policy is that the basic nature of a criminal
investigator's work requires considerable amounts of unscheduled work,
often worked at the discretion of the individual without prior
approval of a supervisor. Since payment of Availability Pay is

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mandatory, an SA may not voluntarily decline to perform the required unscheduled work, except as provided below.

(1) If, for a specified period of time, an SA believes he or she will not be able to meet the eligibility requirements for Availability Pay because of PERSONAL OR FAMILY HARDSHIP, he or she may submit a written request to the division/office head requesting temporary discontinuance of Availability Pay, clearly stating the nature of the hardship that prevents him or her from performing the required amount of unscheduled work and the specific period of time the hardship is expected to last. The statement should further note that the SA understands that Availability Pay will be discontinued immediately but that this does not relieve the SA of the obligation to perform unscheduled work as required by the SA's assignment and/or his or her supervisor. Insubordination by refusing to perform necessary unscheduled work may result in appropriate disciplinary action.

(2) The division/office head, or his or her designee, will approve or disapprove the request in writing, to include the reasons for the disapproval, as appropriate. The SA may request reconsideration of a negative determination by the Deputy Assistant Director - Personnel Officer, Administrative Services Division, within 15 calendar days of the date the request was denied.

(3) Upon approval of a request to temporarily discontinue Availability Pay based on hardship, the division/office head must provide written notification to the Assistant Director, Administrative Services Division, Attn: Personnel Policy Unit, including the nature of the hardship, the date the Availability Pay should be terminated (ordinarily at the beginning of a pay period), and the date the hardship is expected to end.

(4) If an SA is granted a discontinuation of Availability Pay based on hardship, he or she and his/her supervisor may at any time thereafter certify his or her availability, at which time Availability Pay will commence. Notification to reinstitute Availability Pay must be sent to the Administrative Services Division immediately. If, at the completion of the approved period of discontinuance, a hardship still exists, the SA may request an extension for another specified period, following the procedures outlined in paragraphs (1) through (3) above.

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8-2 OTHER TYPES OF PREMIUM PAY

Premium compensation on an annual basis for Availability Pay (AVP) is in lieu of all other types of premium pay except for scheduled overtime approved by the Executive Assistant Director for Administration or higher-level FBI official, night and Sunday work, and holiday duty under certain conditions. By law and

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supplemental regulations, Agents receiving premium overtime compensation (AVP) are precluded from being granted compensatory leave.

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8-2.1 Overtime Pay and Compensatory Time: Fair Labor Standards Act (FLSA) or Title 5, Code of Federal Regulations

(1) Authority: This manual citation serves as a guide to employees, managers, and supervisors regarding the approval and earning of overtime and compensatory time within the FBI. Regulatory authority regarding overtime and compensatory time is contained in Title 5, Code of Federal Regulations (5 CFR), Part 550 for FLSA exempt employees and Part 551 for FLSA nonexempt employees. Case law, Comptroller General decisions, and direction provided by the Office of Personnel Management offer supplemental information and interpretation of the overtime and compensatory time provisions contained in 5 CFR.

(2) Determination of Exempt or Nonexempt:

(a) Employees are exempt or nonexempt from coverage under the FLSA based on the primary duties of their positions. FLSA designations of exempt or nonexempt determine the amount and/or type of overtime compensation paid to employees for work in excess of eight hours in a day (with the exception of employees assigned to alternative work schedules who have regularly scheduled shifts in excess of eight (8) hours in a day) or 40 hours in a week.

(b) Exemption Categories: The following four categories define the nature of work considered exempt from the FLSA. The nature of the work then determines the positions and employees exempt from the FLSA.

1. Executive: Positions such as supervisors, foremen, or managers at any organizational level that have authority to recommend or suggest most types of personnel actions such as selections, promotions, and performance ratings; exercise discretion and independent judgment in areas like work planning, organization, and assignment; and devote at least 80 percent of time in a workweek to such functions.

2. Administrative: Positions that affect the formulation or execution of management programs or policies; or involve management or business functions supporting services of substantial importance to the organization. Work is intellectual and varied in nature or of a specialized or technical nature that requires considerable special training, experience, and knowledge. Discretion and independent judgment are exercised in the performance of work and supervision is general in nature. Such work is performed for at least 80 percent of time in a workweek. Administrative positions are generally exempt at grades GS-9 and above.

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3. Professional: Positions that require education and training that meet the requirements for a bachelor's or higher degree with major study in or pertinent to the specialized field of work performed. Work performed is intellectual and varied in nature and performed under general supervision. Professional positions are generally exempt at grades GS-9 and above.

4. Foreign Exemption Criteria: Applies to permanent positions stationed in foreign locations.

(c) Federal Wage System (FWS) employees are generally nonexempt with the exception of those meeting the executive exemption category in (b) 1. above.

(d) Special Agent (SA) employees are exempt from the FLSA. (Also refer to Part 1, 8-2.1.1, of this manual for additional procedures relevant to requesting, approving, scheduling, and paying of overtime for SAs.)

(e) Employees' FLSA status may be determined by referring to the Standard Form 50-B, Notification of Personnel Action, item 35. Employees may also check at the top of their Attendance Registers to determine exempt or nonexempt status.

(3) Payment for Overtime Worked:

(a) FLSA Exempt: Overtime pay for employees whose rate of basic pay exceeds GS-10, step 1, will be the greater of (1) one and one-half (1.5) times the minimum hourly rate of basic pay for grade-10 (i.e., GS-10, step 1), including any applicable special salary rate, locality rate of pay, or special pay adjustment for law enforcement officers, or (2) the employee's own hourly rate of basic pay, including any applicable special salary rate, locality rate of pay, or special pay adjustment for law enforcement officers. Exempt employees will be paid in 15-minute increments. However, exempt employees may at their own volition decide to work additional hours without payment for such overtime.

(b) FLSA Nonexempt: Overtime is paid at one and one-half times employees' hourly regular rates of pay, including locality-based comparability pay. Nonexempt employees must be paid for all time worked whether that work has been approved or "suffered and permitted." Suffered and permitted means work performed by employees for the benefit of the FBI, whether requested or not, provided the employees' supervisors knew or had reason to believe that the work was being performed and had an opportunity to prevent the work from being performed.

(4) Time in a Travel Status: When possible, travel should be scheduled within employees' regularly scheduled administrative workweeks. Otherwise, there are specific criteria governing payment of overtime to employees in travel status.

(a) FLSA Exempt: Only compensated if travel is within employees' regularly scheduled administrative workweeks and working

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hours. Exempt employees may also be compensated for travel if it involves the performance of actual work while traveling (such as accompanying a prisoner), is incident to travel that involves the performance of work while traveling (such as mail couriers driving vehicles), is carried out under such arduous and unusual conditions that the travel is inseparable from work (such as travel by unusual modes of transportation, travel over harsh terrain, or the like), or results from an event which could not be scheduled or controlled administratively by the government (such as training provided by a private vendor for individuals inside and outside the government). These exceptions are very narrowly construed and will rarely apply to FBI employees.

(b) FLSA Nonexempt: In addition to travel provisions for exempt employees, nonexempt employees are compensated if travel falls within their regular working hours (on regular workdays or regular days off), employees are required to drive a vehicle or perform other work while traveling, employees are required to travel as passengers on one-day assignments away from their official duty stations, or employees are required to travel as passengers on an overnight assignment away from their official duty stations during hours on nonworkdays that correspond to their regular working hours.

(c) Home-to-Work Commute: For both exempt and nonexempt employees, normal travel to and from work is not compensable. In addition, when employees travel directly from home to a temporary duty location, the time employees would have spent in normal travel from home to their official duty stations is deducted from any overtime that is paid for travel purposes. Regulations permit establishment of a radius of not greater than 50 miles to determine whether employees' travel is within or outside employees' official duty stations for determining entitlement to overtime pay.

(d) Time Waiting for Common Carriers: Time waiting for transportation with common carriers (such as airlines, trains, and buses) is generally not compensable for either exempt or nonexempt employees unless such time occurs during employees' regular working hours.

(5) Time Spent in Training or Attending a Lecture, Meeting, or Conference:

(a) FLSA Exempt: Overtime compensation for time spent for the above purposes is generally not permissible. Availability Pay for SAs will continue during periods of FBI sanctioned training except for New Agent Training.

(b) FLSA Nonexempt: Overtime compensation for time spent in apprenticeship or other entry level training is not permissible. Other training including attendance at lectures, meetings, or conferences in which employees are directed to participate by the FBI and where the purpose of such training is to improve employees' performance of the duties and responsibilities in their current positions may be compensable as overtime when accomplished outside the employees' regularly scheduled administrative workweeks.

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(c) Scheduling Training: Where feasible, government-sponsored training should be scheduled to allow for travel during employees' regular workweeks. Agencies, however, have discretionary authority to determine when it is impractical to schedule training to meet such requirements and, thus, require travel outside employees' regular workweeks.

(6) Call-back Overtime Work: For both FLSA exempt and nonexempt employees, irregular or occasional overtime work performed by employees on days when work was not scheduled or for which employees are required to return to their place of employment will be compensated for a minimum of two (2) hours of such overtime work. This does not apply to exempt employees who voluntarily decide to work outside their regularly scheduled workweeks.

(7) Compensatory Time Off in Lieu of Overtime Pay:

(a) FLSA Exempt: Employees whose rates of basic pay, including locality-based pay adjustments, exceed GS-10, step 10, may be compensated for overtime work with an equivalent amount of compensatory time off. Otherwise, the FBI may grant compensatory time off in lieu of overtime pay only if requested in writing by exempt employees. If compensatory time off is not used within the time limit fixed by the FBI, the employees' entitlement to the compensatory time off or overtime pay is forfeited unless failure to take the compensatory time off is due to an exigency of the service beyond employees' control and employees' time off was officially cancelled in writing.

(b) FLSA Nonexempt: Nonexempt employees may be paid for overtime work with compensatory time off but only if requested in writing by employees. Supervisors may never directly or indirectly intimidate, threaten, or coerce nonexempt employees to accept compensatory time off in lieu of pay for overtime hours worked. If compensatory time off is not used within the time limit fixed by the FBI, employees must be paid at the overtime rate in effect when the compensatory time was earned.

(c) Form FD-813, Compensatory Time Request: This form may be used for the purposes of requesting and approving the earning of compensatory time.

(d) Other Information on Compensatory Time: The FBI's LEAVE POLICY MANUAL should be consulted for other information relevant to the approval and use of compensatory time including hours, if any, which may be carried over at the end of the leave year. Supplemental information concerning the earning and use of compensatory time may be provided when necessary to cover emergency or other special situations.

(8) Approval to Work Overtime: All overtime work is to be approved and scheduled in writing by supervisors and managers granted such authority. Division and office heads may delegate the authority to approve support employees' overtime work to supervisors and managers, as desired, in consonance with policies of their divisions

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and offices. Overtime for SAs must be approved by the Executive Assistant Director for Administration or higher-level FBI official (refer to Part 1, 8-2.1.1, of this manual).

(9) Responsibilities: Managers and supervisors are expected to judiciously monitor the approval and use of overtime (including compensatory time off) and to be aware of the basic rules governing overtime work and compensation for overtime work within the federal government.

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| 8-2.1.1 Scheduled Overtime (SOT) for Law Enforcement Officers (Special Agents (SAs)) |(See MAOP, Part 1, 8-2.1.)|

(1) SAs qualifying for overtime are compensated at the greater of one and one-half times the basic hourly rate for grade GS-10, Step 1, including any locality-based comparability pay, or the hourly rate of base pay, including any locality-based comparability pay, of the employee. All overtime for the FBI's SAs must be approved in advance, through the appropriate chain of command, by the Executive Assistant Director for Administration or higher-level FBI official, scheduled in writing and communicated to the affected employee(s) in advance of the administrative workweek in which the overtime is to be performed.

(2) Each SOT request must be submitted in writing, through the chain of command, to the Executive Assistant Director for Administration or higher-level FBI official, for approval as follows:

(a) Must be approved by the appropriate ADIC(s), SAC(s), office heads and the cognizant FBIHQ divisions (Counterintelligence Division, Criminal Investigative Division, Laboratory Division, or other substantive FBIHQ division).

(b) Must be reviewed by the Finance Division (FD) to determine the financial impact before transmittal to the Executive Assistant Director for Administration or higher-level FBI official for final approval.

(c) Must contain specific circumstances which require performance and payment of SOT.

(d) Must contain an explanation of why the use of unscheduled work compensated by Availability Pay (AVP) and/or increased staffing to cover the required work assignment is insufficient.

(3) Financial Issues

(a) Impact: Sufficient detail must be provided in a request to enable the FD to develop an estimate of the cost of the

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SOT. To develop such an estimate, the FD must have the number of SAs, the grades of the personnel to be assigned, the duty station of record for the personnel to be scheduled/assigned, and the expected duration of the assignment. (Note: Personnel on Temporary Duty are compensated for overtime purposes based upon their duty station of record, not their temporary assignment.)

(b) Biweekly limitation on earnings: SAs approved for receipt of SOT are subject to the biweekly limitation on receipt of premium pay. Earnings which are comprised of basic pay, plus premium pay (AVP, SOT, Night Differential, Sunday Pay, and Holiday Pay) are limited to the biweekly limitation of premium pay. For SAs, the biweekly limitation is the lesser of 150 percent of the rate for GS-15, Step 1 (including locality pay) or the rate of Executive Level V.

(c) Method of computation: The overtime hourly rate for SOT, applicable to SAs, is the greater of one and one-half times the hourly rate for GS-10, Step 1 (including locality pay) or the employee's regular hourly rate (including locality pay).

(d) Role of the FD: FD must provide the financial impact of any proposed use of SOT to the Executive Assistant Director for Administration or higher-level official prior to his/her review of the request.

(4) Factors to be satisfied before approval of SOT:

(a) A substantial number of SAs are to be scheduled.

(b) A written schedule must be formulated and presented to the affected employee(s) in advance of the administrative workweek. An administrative workweek for most SAs begins on Sunday at 12:01 a.m. and runs through midnight on the following Saturday. Thus, the schedule must be established, and communicated in writing to affected SAs, prior to midnight on Saturday, at the beginning of the workweek. OTHERWISE, SA PERSONNEL WOULD NOT BE ELIGIBLE FOR COMPENSATION FOR ANY APPROVED SOT PERFORMED IN THE FOLLOWING SEVEN-DAY PERIOD.

(c) By statute, the first two hours of extra duty performed by an SA on any REGULAR WORKDAY on which he/she has been scheduled for SOT are credited as time which must be compensated by Availability Pay (AVP) rather than SOT.

SAs must be scheduled for more than 10 hours per regular workday (i.e., eight hours regular duty and two hours AVP). SAs routinely work a five-day workweek. Each of the five days is considered a REGULAR workday. The two remaining days of the week are considered REGULAR DAYS OFF (RDOs). SOT worked by an SA on an RDO is treated differently for compensation purposes than SOT performed on a REGULAR workday.

EXAMPLE A: An SA is scheduled on a regular workday from 8:15 a.m. to 5:00 p.m. The SA is also scheduled for four hours of SOT. The SOT was approved by the Executive Assistant

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Director for Administration or higher-level official, scheduled in writing, and presented to the employee in advance of the administrative workweek. Therefore, the SA is scheduled for a total of 12 hours (including 45 minutes for a meal break). Since work was performed on a regular workday, the SA will be paid for eight hours at his/her regular rate of compensation. In addition, the SA will be credited for the four hours of SOT as follows: two hours of AVP, to fulfill the daily AVP requirement, and two hours of overtime.

EXAMPLE B: An SA is scheduled in advance of the administrative workweek to perform a 12-hour shift on Saturday; SOT has been approved by the Executive Assistant Director for Administration or higher-level official, the schedule written, and presented to the employee, in advance of the administrative workweek. However, Saturday is NOT a regular workday for the SA. The SA will then be credited with 12 hours of SOT for the shift worked on that Saturday. The first two hours of extra duty on that Saturday will NOT be treated as AVP work hours, because the hours do not occur on the SA's regular workday.

EXAMPLE C: An SA's administrative workweek begins on Sunday and ends the following Saturday. The SA is instructed on Monday to perform four hours of additional work on Tuesday of the same workweek. Tuesday is one of the SA's regular workdays, and the SA works from 7:15 a.m. to 8:00 p.m. to cover the four hours. As the SA was not scheduled for the additional hours in advance of the administrative workweek, the SA will not receive any SOT compensation. Instead, the entire period of extra duty on Tuesday will be credited as AVP hours.

(5) SOT may be considered in circumstances in which there is an expectation that the emergency requirement can reasonably be expected to extend for two weeks or more.

(6) Events in which SOT is authorized should be relatively rare and limited to those situations in which:

(a) It is not practicable to use sufficient investigative resources to fulfill the requirement without the use of SOT.

(b) It is imperative that there is a rapid or otherwise positive resolution to the event because of its notoriety or impact upon the public.

(c) In most instances, the investigation involves an immediate or impending threat to life or property or national security (e.g., bombings, hostage or siege situations).

(7) Example: A major case has received approval for SOT through the chain of command from the Executive Assistant Director for Administration or higher-level FBI official on Thursday, August 22, 2002. The first regular administrative workweek, after approval of SOT for which work can be scheduled in advance began on Sunday, August 25, 2002. In accordance with FBI policy, SA John Doe was provided the following written work schedule on Saturday, August

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| 24, 2002. | Note that the schedule includes a 45-minute meal break each day.

DAY	DATE	SCHEDULE
Sunday	August 25, 2002	Off Duty
Monday	August 26, 2002	6 a.m. to 6:45 p.m.
Tuesday	August 27, 2002	8 a.m. to 6:45 p.m.
Wednesday	August 28, 2002	6 a.m. to 8:45 p.m.
Thursday	August 29, 2002	8 a.m. to 6:45 p.m.
Friday	August 30, 2002	6 a.m. to 8:45 p.m.
Saturday	August 31, 2002	6 a.m. to 8:45 p.m.

The actual hours worked by SA John Doe and the accurate recording of AVP and SOT are shown below. Note: Time and attendance personnel entering time capture information must be provided written work schedules by appropriate supervisory personnel for all SAs claiming SOT to ensure that records for these SAs clearly state whether AVP or SOT is claimed.

DAY	DATE	HOURS WORKED	TOTAL HOURS	OVERTIME
Sun.	Aug. 25, 2002	Off Duty	0	0
Mon.	Aug. 26, 2002	6 a.m. to 6:45 p.m.	12 (2 AVP)	2
Tues.	Aug. 27, 2002	7 a.m. to 6:45 p.m.	11 (3 AVP)	0*
Wed.	Aug. 28, 2002	6 a.m. to 8:45 p.m.	14 (2 AVP)	4
Thurs.	Aug. 29, 2002	8 a.m. to 6:45 p.m.	10 (2 AVP)	0
Fri.	Aug. 30, 2002	6 a.m. to 8:45 p.m.	14 (2 AVP)	4
Sat.	Aug. 31, 2002	6 a.m. to 8:45 p.m.	14	14

*Note: On Tuesday, August 27, 2002, the SA was scheduled to work from 8 a.m. to 6:45 p.m. but reported for duty at 7 a.m. Since the additional one hour was not scheduled in advance, the unscheduled hour cannot be claimed as overtime. The hour may be added to the two hours of AVP for a total of three hours' AVP.

(8) Use and Maintenance of Written Schedules

After SOT has been approved by the Executive Assistant Director for Administration or higher-level official, schedules prepared in writing and presented to affected employees, the written schedule(s) must also accompany pertinent time-and-attendance records so that regular hours, hours credited as AVP and hours credited as SOT may be verified and accounted for by appropriate time-and-attendance personnel. These written schedules should also be maintained by time-and-attendance personnel at the employees' permanent duty stations.

(9) Discontinuance of SOT

Overtime pay will cease the day that appropriate Bureau management determine that the circumstances that caused the need for overtime no longer exist or when it becomes practicable to use investigative resources without the use of SOT.

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| 8-2.1.2 Fair Labor Standards Act (FLSA) Claims Procedures

| An employee may file a claim with the FBI or Office of
| Personnel Management (OPM) at any time challenging the correctness of
| his or her FLSA exemption status determination. An employee may also
| file an FLSA claim concerning his or her entitlement to overtime pay
| for work performed under the FLSA; however, time limits apply. All
| FLSA claims filed on or after June 30, 1994, are subject to a two-year
| statute of limitations (three years for willful violations, see
| definition below).

| (1) Definitions:

| (a) Claim: Means a written allegation from a current
| or former employee concerning his or her FLSA exemption status
| determination or entitlement to overtime pay for work performed under
| FLSA.

| (b) Claim period: Means the time during which the
| cause or basis for the claim occurred.

| (c) Claimant: Means a current or former employee who
| files an FLSA claim.

| (d) Preserve the claim period: Means to establish the
| period of possible entitlement to back pay by filing a written claim
| with either the FBI or the OPM.

| (e) Statute of limitations: Means the time frame
| within which an FLSA pay claim must be filed, starting from the date
| the right accrued.

| (f) Willful violation: Means a violation in
| circumstances where the FBI knew that its conduct was prohibited by
| the FLSA or showed reckless disregard of the requirements of the FLSA.

| (2) Preserving the Claim Period

| The claimant or his or her representative may preserve
| the claim by submitting a written claim to the Position Management
| Unit (PMU), Administrative Services Division (ASD), FBIHQ, during the
| claim period. The date the PMU receives the claim is the date that
| determines the period of possible entitlement to back pay. The PMU
| will provide written acknowledgment of receipt of the claim. All
| decisions will be approved by the Personnel Officer, Personnel
| Management Branch, ASD, and sent to the employee or the employee's
| representative.

| (3) Designating a Representative

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| A claimant may designate a representative to assist him
| or her in preparing or presenting a claim. The claimant must
| designate the representative in writing. A representative may not
| participate in FBI interviews unless specifically requested to do so
| by the FBI. The FBI may disallow an employee's representative who is
| a federal employee in any of the following circumstances:

| (a) When the individual's activities as a
| representative would cause a conflict of interest or position;

| (b) When the designated representative cannot be
| released from his or her official duties because of the priority needs
| of the FBI; or

| (c) When the release of the designated representative
| would give rise to unreasonable costs to the FBI.

| (4) Information that must be included in a claim

| (a) Employee's representative, if any;

| (b) A description of the nature of the claim and the
| specific issues or incidents giving rise to the claim, including the
| time period covered by the claim;

| (c) Evidence which supports the claim;

| (d) The remedy sought by the employee;

| (e) A statement from the employee that he or she has
| or has not filed an action in an appropriate United States court; and

| (f) Any other information that the employee believes
| the ASD should consider.

| The claimant or the claimant's designated representative must provide
| any additional information requested by the ASD within 15 workdays
| after the request is made. The disclosure of information by an
| employee who files a claim is voluntary. However, the ASD may not be
| able to render a decision without the requested information. In such

| case, the claim will be cancelled without further action being taken
| by the ASD.

| (5) Claim Confidentiality

| If the claimant wishes the claim to be treated
| confidentially, the claim must specifically state that the identity of
| the claimant not be revealed. Witnesses or other sources may also
| request confidentiality. Every effort will be made to maintain
| confidentiality. If the ASD is unable to obtain sufficient
| information to render a decision and preserve the requested
| confidentiality, the ASD will notify the claimant that the claim will
| be cancelled with no further action by the ASD unless the claimant
| voluntarily provides written authorization for his or her name to be
| revealed.

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(6) The Claims Process (Internal FBI)

The type of claim filed will dictate the decision-making process as noted below. See item (7) for information regarding filing a claim directly with the OPM.

(a) If an employee is challenging the correctness of his or her exemption status and/or entitlement to overtime pay and the employee is currently exempt:

Step 1: PMU conducts the initial review.

Step 2: If PMU disagrees with the employee, then a written recommendation is forwarded to the Personnel Officer, PMB, ASD, for a final decision. Go to step 6.

Step 3: If PMU agrees with the employee's claim, then a written recommendation is forwarded to the Personnel Officer, PMB, ASD, for a final decision.

Step 4: The final decision is forwarded to STAFU for processing of the action.

Step 5: The STAFU will forward a copy of the decision to Finance Division for determination of back pay entitlement.

Step 6: A written decision is forwarded to the employee or his or her representative.

(b) If an employee is challenging the correctness of his or her exemption status and/or entitlement to overtime pay and the employee is currently nonexempt:

Step 1: PMU conducts the initial review.

Step 2: If PMU disagrees with the employee, then a written recommendation is forwarded to the Personnel Officer, PMB, ASD, for a final decision. Go to step 6.

Step 3: If PMU agrees with the employee's claim, then a written recommendation is forwarded to the Personnel Officer, PMB, ASD, for a final decision.

Step 4: The final decision is forwarded to STAFU for processing of the action.

Step 5: The STAFU will forward a copy of the decision to the Finance Division, along with a request for waiver of overpayment.

Step 6: A written decision is forwarded to the employee or his or her representative.

(7) Filing a Claim Directly with the Office of Personnel Management (OPM)

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| An employee may also file a claim with the OPM during the claim period. However, an employee cannot file a claim simultaneously with the FBI and OPM. An employee also has the right to bring an action in an appropriate United States court. Filing a claim with the FBI or with OPM does not satisfy the statute of limitations governing FLSA claims filed in court. The FBI will not decide an FLSA claim that is in litigation.

| It is a matter of personal discretion as to whether an employee files a claim with the FBI first and then the OPM. A claimant who receives an unfavorable determination from the FBI may still file the claim with the OPM. However, a claimant may not file the claim with the FBI after an unfavorable decision from the OPM. An OPM decision on a claim is final and is not subject to further administrative review. |

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8-2.2 Night Differential Pay

If any of the regularly scheduled basic workweek falls between 6:00 p.m. and 6:00 a.m., the employee will be eligible for such hours not in excess of eight hours for night differential pay which is at the rate of 10 percent of the basic hourly rate, including any applicable locality-based comparability payment of the individual. To qualify for night differential pay, the work must be duly authorized in advance and scheduled to recur on successive days or after specified intervals such as one designated day over a period of weeks. Night differential pay may be claimed when an employee is substituting for another employee on leave who was regularly scheduled to work during the regularly scheduled night differential period. (Refer to Part 1, 8-6, of this manual regarding Wage Board employees.

**EffDte: 10/31/2000 MCRT#: 1034 Div: D3

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8-2.3 Sunday Differential Pay

| An employee is eligible for Sunday differential pay if the regularly scheduled basic workweek includes Sunday as one of the official five workdays. Compensation will be at the rate of 25 percent of the basic hourly rate, including any locality-based comparability payment of the individual, not in excess of eight hours for the tour of duty.

**EffDte: 12/04/1997 MCRT#: 785 Div: D3FD

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8-2.4 Holiday Pay

An employee may also receive additional compensation if assigned to duty on an official holiday, which falls within the employee's basic administrative workweek, at the rate of the basic hourly rate, including any applicable locality-based comparability payment of the individual. Employees on call or on standby on a holiday would not receive holiday pay unless actually called in to work and then only for work performed during their official working hours. An employee who is assigned or ordered to duty on a holiday is entitled to receive at least two hours of holiday pay but not more than eight hours of such compensation. No new permanent odd-hour shifts which would involve premium compensation should be set up or holiday pay claimed without advance FBIHQ approval. Should an emergency situation arise requiring prompt assignment of employees on a holiday, the SAC has the authority to utilize the necessary personnel and in these cases, because it is an emergency situation, the employees working will receive holiday pay up to eight hours even if the hours worked fall outside of their normal working hours. (See Part II, 1-2.4.4, of this manual, for listing of legal holidays.)

**EffDte: 10/19/1993 MCRT#: 122 Div: D3

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8-3 EMERGENCY DUTY IN EXCESS OF REGULAR WORKDAY

Where necessary for Agent to work through all or most of night because of emergency, division head may administratively change Agent's official workday. Division head should judiciously decide each case in light of Bureau's interest compared with Agent's physical well-being. However, in administering this, each day from 12 midnight must be considered as a unit for purposes of computing regular eight-hour shift and overtime. Any exceptions must be approved by FBIHQ.

The following examples illustrate scheduling of SAs for emergency duty.

(1) An SA whose regular hours are 8:15 a.m. to 5:00 p.m., Monday through Friday, reports for duty at 7:00 a.m. on that day and because of emergency duty, works straight through (except for normal meal breaks) until 8:00 a.m. the next day. The SA may be considered as having worked the regular shift from midnight to 8:00 a.m. on the second day and, therefore, will not be required to work regular hours (8:15 a.m. to 5:00 p.m.) on the second day. Any additional time worked during the course of the two days, may be claimed as Availability Pay (AVP). However, the extra duty was not approved as scheduled overtime and may not be claimed for overtime pay purposes.

(2) An SA whose regular work hours are 8:15 a.m. to 5:00 p.m., Monday through Friday, reports for duty at 7:15 a.m. one day; quits work at 6:00 p.m. on the same day. The SA then returns to duty

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| at 11:00 p.m. because of emergency duty; works through to 5:00 a.m.
| the next day; takes a break for sleep; returns to work at 1:00 p.m.
| and works through until 6:00 p.m. The first day of work will be
| computed as follows: Regular duty from 8:15 a.m. to 5:00 p.m. and
| three hours of AVP (7:15 to 8:15 a.m., 5:00 to 6:00 p.m. and 11:00 to
| 12:00 p.m.). On the second day, the SA may be credited with five
| hours of regular time from 12:01 a.m. to 5:00 a.m. and three
| additional hours of regular time from 1:00 to 4:00 p.m. for a regular
| shift of eight hours. The additional time on the second day may be
| counted as AVP but not as scheduled overtime as overtime was not
| approved. |

**EffDte: 01/21/1999 MCRT#: 847 Div: D3 Cav: SecCls:

8-4 WORKLOAD

Division head has continuing responsibility to insure equitable sharing of workload by Agents. FBIHQ insists that all division heads carry out this obligation completely and regularly.

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8-5 SPECIAL AGENT WEEKEND DUTY ASSIGNMENTS

SACs have the discretion to utilize Agents or qualified support personnel for duty during regular office hours on nonworkdays. When an Agent comes up for such duty assignment, the workweek is to be administratively changed, to allow the individual to have another day off to replace the normal day off of either Saturday or Sunday, as the case may be. In the case of the Saturday duty assignment, the workweek of the Agent, for that particular week, is to be Tuesday through Saturday with normal days off in that week of Sunday and Monday. In the case of Sunday duty Agents, the workweek for that particular week will be Sunday through Thursday, with normal days off of Friday and Saturday. Should any of these official hours fall between 6:00 p.m. and 6:00 a.m. the individual will be entitled to related night differential pay, and if on Sunday to not over eight hours of Sunday differential pay. No new work shifts involving such additional premium pay are to be established without prior FBIHQ approval. Duty schedules should be established well in advance, in order that individuals concerned may be aware of their responsibilities, and make any necessary adjustments. Such weekend duty assignments are to be rotated among the Agent staff of the office.

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8-6 WAGE BOARD EMPLOYEES (See MAOP, Part 1, 8-2.2, 20-7.1.)

Wage Board employees do not come under the Compensation Act; therefore, the following regulations governing Wage Board employees must be borne in mind:

| (1) |Deleted|

| (2) |Deleted|

(3) All work in excess of eight hours per day or 40 hours per week must be compensated for at one and one-half times the regular rate. An exception is permitted under the Federal Employees Flexible and Compressed Work Schedules Act of 1982. See MAOP, Part 1, 20-7.1 & 20-7.2, Flexible and Alternate Work Schedules (AWS), and Part 2, 1-2.4.2.

(4) An SF-52 should be submitted to FBIHQ whenever an employee changes shifts so that appropriate salary adjustments can be made. The following items should be completed:

(a) Part A Items 1, 3, 5, and 6

(b) Part B Items 1, 2, 4, 14, and 22

(c) Part F advise work hours, days and total hours employee will be working

(5) Wage Board employees are entitled to night differential of 7 1/2 percent for regularly scheduled nonovertime work when the majority of their work hours occurs between 3 p.m. and midnight; or 10 percent if the majority of their work hours occurs between 11 p.m. and 8 a.m. The night differential is paid for the entire shift when the majority of hours, meaning a number of whole hours greater than one-half (including meal breaks), falls within the specified periods.

(6) Deleted

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8-7 HAZARDOUS DUTY PAY (ELECTRONICS TECHNICIAN)

Electronics Technician (ET) employees who are required to perform hazardous duties or duties involving physical hardship as indicated in Title 5, Code of Federal Regulations (CFR), Part 550, Subpart I, Appendix A, and as set forth below, are entitled to additional compensation. Those duties are:

(1) Exposure to Hazardous Weather or Terrain

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(a) Work in rough and remote terrain. When working on cliffs, narrow ledges, or near vertical mountainous slopes where a loss of footing would result in serious injury or death, or when working in areas where there is danger of rock falls or avalanches.

(b) Traveling under hazardous conditions.

1. When travel over secondary or unimproved roads to isolated mountaintop installations is required at night, or under adverse weather conditions (such as snow, rain, or fog) which limits visibility to less than 100 feet, when there is danger of rock, mud, or snow slides.

2. When travel in the wintertime, either on foot or by means of vehicle, over secondary or unimproved roads or snow trails, in sparsely settled or isolated areas to isolated installations is required when there is danger of avalanches, or during "whiteout" phenomenon which limits visibility to less than 10 feet.

3. When work or travel in sparsely settled or isolated areas results in exposure to temperatures and/or wind velocity shown to be of considerable danger or very great danger (see Windchill Chart, Title 5, CFR, Part 550, Subpart I, Appendix A-1), and shelter (other than temporary shelter) or assistance is not readily available.

(2) Height Work

Working on any structure of at least 50 feet above the base level, ground, deck, floor, roof, etc., under open conditions, if the structure is unstable or if scaffolding guards or other suitable protective facilities are not used, or if performed under adverse conditions, such as snow, sleet, ice on walking surfaces, darkness, lightning, steady rain, or high wind velocity.

It is generally expected that above duties under (1) and (2) will be performed only by the more experienced ETs and only on an irregular or intermittent basis. The rate of compensation is 25 percent of base pay for all hours in a pay status on the day in which the duties are performed.

| The SAC must notify FBI Headquarters|ET Program Manager's Office|of hazardous duties performed, by|electronic communication (EC). EC|is to include information relative to: the nature of the work performed and how this work meets Title 5, CFR, Part 550, Subpart I, Appendix A criteria; reason(s) why work could not be delayed until more favorable conditions existed; and the employee's pay and duty status for the day in which the work was performed (tour-of-duty, overtime, leave-without-pay, hazardous-duty time, etc.). If it is determined that the ETs are performing hazardous duties that are not contained in Appendix A, efforts should be made to include these activities in the Appendix, pursuant to Title 5, CFR, Section 550.903(b).

**EffDte: 12/16/2002 MCRT#: 1249 Div: D3

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8-8 WITHIN-GRADE INCREASES (WIGI)

A WIGI is a one-step increase within a salary grade and is based on length of service and performance at an acceptable level of competence. Within the FBI, the "acceptable level of competence" requires performance rated at the Meets Expectations level as set forth in a performance plan. A Quality Step Increase (QSI) may be considered and awarded in recognition of sustained performance which substantially exceeds normal requirements and gives promise of continuing at that same high level.

**EffDte: 05/31/2002 MCRT#: 1207 Div: D3

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8-8.1 Waiting Period

(1) The waiting period for employees in steps one - three of a grade is 52 calendar weeks; for those in steps four - six, 104 weeks; and for those in steps seven - nine, 156 weeks.

(2) Quality step increases do not change the date for consideration for the next regular WIGI increase except in those cases where the quality increase places the employee in Step 4 (where the waiting period changes to two years) or Step 7 (where the waiting period changes to three years). In these instances, the employee must serve an additional year before becoming eligible to be considered for a WIGI. However, employee must receive an overall rating of Meets Expectations before he/she may be considered for a quality step increase. (See MAOP, Part 1, 5-14 (4).)

**EffDte: 05/31/2002 MCRT#: 1207 Div: D3

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8-8.2 Effect of Leave Without Pay (LWOP)

If more than ten days of LWOP for each year of the waiting period are used, the effective date of the WIGI is delayed for the amount of time which exceeds the ten days. For example, if 15 days of LWOP are taken when the pertinent waiting period is one year, the WIGI would be delayed for one pay period because of the five days taken in excess of the maximum allowable ten days.

**EffDte: 02/28/1991 MCRT#: 0 Div: D3

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8-8.3 Effective Date

WIGIs are effective at the beginning of the next pay period following completion of the required waiting period providing employee's performance is at an acceptable level of competence.

**EffDte: 02/28/1991 MCRT#: 0 Div: D3 Cav: SecCls:

8-8.4 Performance Requirements

(1) To be entitled to a WIGI, an employee's performance must be at an acceptable level of competence (ALOC) and performance appraisal is the basis for determining if an employee is performing at an ALOC. In the absence of unusual circumstances, employees must achieve the Meets Expectations level to be performing at an ALOC.

(2) The rating of record used as the basis for an ALOC determination for a WIGI must have been assigned no earlier than the most recently completed appraisal period.

(3) An employee whose overall performance during the waiting period is at the Does Not Meet Expectations level is not performing at an ALOC.

(4) If the level of an employee's most recent appraisal does not support the rating official's decision to grant or withhold a WIGI, he/she must submit a current Performance Appraisal Report to justify granting or withholding the WIGI to the Performance, Recognition and Awards Unit, Administrative Services Division.

(5) If at any time during the employee's waiting period it becomes evident that his/her performance is below the Meets Expectations level, the rating official must advise the employee that, in the absence of performance improvement, his/her WIGI may be denied and that he/she may be in jeopardy of reassignment, reduction in grade or removal. (See MAOP, Part 1, 5-4.7 for details regarding consequences of performance rated below the Meets Expectations level.)

**EffDte: 08/01/2003 MCRT#: 1294 Div: D3 Cav: SecCls:

8-8.5 Notice of ALOC Determination

(1) Approximately 90 days before the completion of the waiting period, the head of the office will receive a listing of employees who are eligible for WIGI consideration to be disseminated to the appropriate supervisors. If an employee on the list is performing at the Meets Expectations level, no action will be

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| necessary on the part of the employee's supervisor. However, if an
| employee is performing at the Does Not Meet Expectations level, the
| Performance, Recognition and Awards Unit should be notified. A
| representative from the Performance, Recognition and Awards Unit will
| offer the supervisor advice and assistance as needed. |

(2) Positive determinations are confirmed in writing when the employee receives his/her Standard Form 50-B, Notification of Personnel Action, regarding the granting of his/her WIGI.

(3) If a negative determination is reached based on failure to meet the performance appraisal criteria, the employee is informed of this by a written communication from the Personnel Officer advising of the denial of the WIGI, the reason for the negative determination and his/her right to request reconsideration of the determination.

**EffDte: 02/14/2003 MCRT#: 1258 Div: D3

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8-8.6 Reconsideration of a Negative Determination (See MAOP, Part 1, 14-6.)

(1) An employee may request reconsideration of the Bureau's action by doing so in writing within 15 calendar days after receiving the denial notification. If the denial is sustained, employee may, within 30 calendar days after being so notified, appeal in writing to the Merit Systems Protection Board (MSPB). The appropriate address will be furnished to the employee in the letter sustaining the denial. An employee can only appeal to the MSPB if he/she requests internal reconsideration of the WIGI denial first.

(2) FBIHQ, upon receipt of a reconsideration request, will establish a reconsideration file and proceed with the reconsideration in accordance with 5 CFR 531.410 and Bureau policy.

(3) The division head or SAC may reconsider a WIGI at any time after the denial; however, barring any such recommendation, a new ALOC determination must be made within 52 calendar weeks of the end of the waiting period to which the negative determination applied. An appraisal at the Meets Expectations level constitutes demonstrated sustained performance at an ALOC. The performance appraisal will not automatically generate a WIGI; therefore, the rating official must submit a written recommendation to grant the WIGI based on the appraisal at the Meets Expectations level. However, if the performance is still at the Does Not Meet Expectations level, the rating official must submit a written recommendation to deny the WIGI based on the appraisal at the Does Not Meet Expectations level.

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8-8.7 Step Increases for Federal Wage System (FWS) Employees

(1) The waiting periods for advancement to the second, third, fourth and fifth rates are 26 calendar weeks for creditable service in rate one, 78 weeks of creditable service in rate two, and 104 weeks of creditable service in each of steps three and four. Lithographic employees have only three steps in each grade with waiting periods as indicated for step two and step three.

(2) If more than five days of LWOP are used in the waiting period for step two, 15 days for step three, or 20 days for steps four or five, the effective date of the increase is delayed for the amount of time which exceeds the specific number of days.

(3) Performance requirements, ALOC determinations and reconsiderations of negative determinations apply to FWS employees as well as GS employees.

(4) FWS employees are not eligible for quality increases regardless of their satisfaction of the performance appraisal requirement.

**EffDte: 08/29/1990 MCRT#: 0 Div: D3 Cav: SecCls:

8-9 APPLICATION OF THE HIGHEST PREVIOUS RATE (HPR) RULE SETTING PAY RATES FOR EMPLOYEES REQUESTING A CHANGE TO A LOWER GRADE (I.E., DEMOTION) FOR PERSONAL BENEFIT OR CONVENIENCE, AND FOR EMPLOYEES BEING PROMOTED, REASSIGNED, OR REEMPLOYED (See MAOP, Part 1, 3-1.1(3).)

HPR is the highest rate of basic pay previously paid to an individual while employed in a position in a branch of the federal government (executive, legislative, or judicial); a government corporation, as defined in Title 5, United States Code, Chapter 1, Section 103; the United States Postal Service or the Postal Rate Commission; or the government of the District of Columbia (if appointed prior to October 1, 1987) without regard to whether the position was subject to the General Schedule.

When an employee is demoted at the employee's request for personal benefit or convenience, promoted, reassigned, reemployed, or transferred (i.e., from agency to agency), federal regulations permit the FBI to fix pay at any rate of the new grade which does not exceed the employee's HPR. The HPR will be applied by the FBI unless an employee is otherwise entitled to a higher rate of pay, such as under the promotion or grade- and pay-retention provisions of Title 5, Code of Federal Regulations (5 CFR). In the context of the HPR, "rate" refers to an employee's highest grade and step and the salary associated with that grade and step at the time it was earned. The following information will be used when establishing the HPR and setting pay.

(1) VOLUNTARY DEMOTIONS REQUESTED BY CURRENT FBI
EMPLOYEES AND PROVISIONS FOR NEW HIRES WITH PREVIOUS FEDERAL
SERVICE

(a) HPR may be based on a regular tour of duty at any rate of basic pay received by an employee while serving under an appointment not limited to 90 days or less, or for a continuous period of not less than 90 days under one or more appointments without a break in service.

(b) When the HPR falls between two steps of a grade, the salary is set at the higher step.

(c) Pay may be set pursuant to HPR no higher than the maximum step of the grade.

(2) TEMPORARY PROMOTIONS

The HPR may not be based upon a rate of pay received in a position to which the employee was temporarily promoted for less than one year, except upon permanent placement in a position at the same or higher grade. (5 CFR Section 531.203(d)(2)(ii) and Section 532.405(d))

(3) APPLICATION TO SUBSEQUENT PERSONNEL ACTIONS

(a) After the initial pay-setting action, the HPR will continue to be credited on all subsequent personnel actions, such as promotions, until reached or exceeded (up to the maximum step of each new grade). Thereafter, normal procedures for calculating promotions would be followed (i.e., the promotion must be equivalent to at least a two-step increase in pay).

(b) When pay falls between two steps of the new grade, the higher step is used.

(4) DEMOTIONS FOR CAUSE

Demotion for personal cause is defined as a "reduction in grade based on the conduct, character, or unacceptable performance of an employee" (5 CFR Section 536.102).

(a) Initial Pay Setting Action: When an employee is demoted for cause, pay is calculated as though an employee had never been promoted from the grade to which the employee is being demoted. If pay falls between two steps of the new grade, the lower step is used.

(b) Promotions after Demotion for Cause: When and if an employee is again promoted, the employee's HPR is applied until reached or exceeded. When the HPR falls between two steps of the new grade, pay is set at the higher step.

(c) Pay may be set no higher than the maximum step of the new grade.

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(5) OTHER ITEMS

(a) Applicability: The HPR policy applies to movement to or within General Schedule (GS) and Federal Wage System (FWS) positions.

(b) Appointments as Experts or Consultants: Pay earned under an appointment as an expert or consultant may not be credited for purposes of the HPR, in accordance with 5 CFR Section 531.203(d)(2)(i).

(c) Crediting Previous Federal Service: To the extent allowed by 5 CFR Section 531.202, Section 531.203, and Section 532.405.

(d) FBIHQ Supervisory Special Agents (SSAs): An FBIHQ GS-15 SSA who voluntarily requests assignment to a grade GS-14 field SSA position to qualify for further advancement as part of the Executive Development and Selection Program (EDSP) may receive the greater of pay retention or the HPR. If pay retention applies, the SSA will be entitled to one-half of any general increase in the GS until the basic salary established for GS-14, step 10 equals or exceeds the SSA's retained rate of pay, at which time pay retention terminates. If the HPR applies and pay would fall between two steps, pay will be set at the higher step. (See MAOP, Part 1, 3-1.1(3), and MIOG, Part 1, 67-6.8.)

(e) Support Employees Returning from Legal Attache (LEGAT) Assignments: If an employee serves in a LEGAT position for the full term and received a promotion that lasted for one year or longer, then HPR may be used to set pay. If the returning employee takes a position that is in a lower grade than that held before going to the LEGAT position, then either pay retention for the salary of the pre-LEGAT position or HPR from the LEGAT position will be used to set pay--the employee will receive whichever is greater. For example, if the employee leaves a grade GS-7 position to go to a LEGAT, is promoted to grade GS-9 in the LEGAT office, and returns to a grade GS-6 position in a field office, that employee's pay in the grade GS-6 position will be set using either pay retention for the grade GS-7 position or HPR for the grade GS-9 position (if that grade was held for at least one year), depending on which one will result in the higher pay.

(f) Leave Without Pay (LWOP): Time in a LWOP status will be credited as time in the current grade unless the LWOP resulted from one or more suspensions. The amount of time suspended would be added to the eligibility time for consideration of the HPR.

(g) Locality Pay Differentials: HPR determinations are made using base pay only. A locality pay differential may not be used to establish the HPR. Thus, a change in the local pay area does not affect the determination of the HPR.

(h) Other Federal Agency Pay Systems: Salary

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received under other federal pay systems such as broad banding may be credited as the HPR on a case-by-case basis. The Staffing Unit (STAFU), Administrative Services Division (ASD), FBIHQ, will determine whether a pay policy for these other systems provides GS equivalencies for the pay system in question.

(i) Request for Exception to HPR: At the time of selection, salary will be set at the HPR unless the EDSP or STAFU, ASD, FBIHQ, is advised to the contrary by the head of the division/office to which the employee is being assigned. If set at a rate other than the HPR, the salary determination will be made in consultation with the EDSP or STAFU and the head of the division/office where the employee is being assigned; this decision, and the reason for same, will be documented in writing via a communication from the receiving office to the Personnel Officer, Attention: STAFU, ASD, FBIHQ. The STAFU will coordinate processing of these requests with the EDSP when warranted, and the employee will be advised of the reason why a rate less than the HPR is being offered via a formal communication from the STAFU. The salary must be established before the employee's entry on duty or movement to a different position.

(j) Special Rate of Basic Pay: HPR may be based on a special rate of pay under certain conditions cited in 5 CFR (e.g., pursuant to 5 CFR Section 531.203(d)(2)(vii)). HPR may not, however, be based on a special rate unless "(A) The special rate of pay is the employee's current rate of basic pay; and (B) An agency official specifically designated to make such determinations finds that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. Such determinations shall be made on a case-by-case basis, and in each case the agency shall make a written record of its positive determination to use the special rate as an employee's highest previous rate."

Concerning item (B), the FBI official designated to make the determination is the Personnel Officer or his/her designee. A communication requesting this determination must be submitted to the Personnel Officer, Attention: STAFU, ASD, FBIHQ, by the affected employee's office to establish an employee's pay based upon his/her HPR following the termination of a special rate of basic pay.

(k) Title Five Exemption Authority (TFXA): Special procedures may exist where HPR would be credited differently for employees and positions covered by the exemption authority. For an explanation of those special procedures, see TFXA operating guidelines.

(l) Retroactive Application: Because the personnel actions involved are generally discretionary, there is a statutory prohibition on applying this policy retroactively.

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**EffDte: 06/10/1994 MCRT#: 260 Div: D3 Cav: SecCls:

| 8-9.2 | Deleted|

**EffDte: 06/10/1994 MCRT#: 260 Div: D3 Cav: SecCls:

| 8-10 | DELETED|

**EffDte: 05/31/2002 MCRT#: 1207 Div: D3 Cav: SecCls:

8-11 PROMOTIONAL ALLOWANCES

**EffDte: 10/19/1995 MCRT#: 465 Div: D3 Cav: SecCls:

8-11.1 Pay Computations

(1) When an employee is promoted from one general schedule (GS) grade to another, the pay is set at a rate in the higher grade that will pay at least the equivalent of a two-step increase in the grade from which promoted.

(2) If an employee is promoted from one grade of the merit pay system (MPS) to a higher MPS grade, the employee will receive a rate of pay in the new grade that exceeds his/her salary in the lower grade by 6 percent.

(3) An employee being promoted from one Federal Wage System (FWS) grade to a higher FWS grade will receive a rate of pay in the higher grade that will pay at least the equivalent of a one-step increase in the grade from which promoted.

(4) In general, when FWS employees are moved to jobs in the GS, they may be paid any GS pay step up to the next highest pay step above the rate they were making as an FWS employee.

| (5) When a vacant position is filled by the temporary
| assignment of a qualified employee at the same or higher grade level,
| there will be no effect upon that employee's permanent grade or pay
| status. |

**EffDte: 04/04/1996 MCRT#: 528 Div: D3

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8-12 COST-OF-LIVING ALLOWANCE/POST DIFFERENTIAL

(1) General Schedule employees in Alaska, Hawaii, Puerto Rico, Virgin Islands and Guam can receive a cost-of-living allowance (COLA) at a rate established by the Office of Personnel Management. Rates range from 5 percent to 25 percent and are subject to increase/decrease based on annual comparative surveys between the nonforeign area and Washington, D.C., area. Employees must meet certain eligibility requirements prior to receiving an allowance. For example, in a given allowance area employees having purchasing privileges in commissary and exchange facilities as a result of current federal employment or living in housing rented from a federal agency as a result of current federal employment may not be eligible to receive a COLA or may receive a lower rate. Employees have the option of not using commissary and exchange facilities and/or government housing in order to receive a full COLA.

(2) Post Differential (PD) is authorized to employees assigned to the Island of Saipan (Northern Mariana Islands) and Guam, in consideration of the difference of environment when compared to that of the States. PD is paid only to employees hired off-island as it is specifically designed as an incentive to induce needed categories of employees who would not otherwise be interested in relocating to the differential area.

(3) Post Differential pay may also be approved by the Department of State for employees serving on temporary duty (TDY) assignments which involve major investigations. However, employees are not entitled to this post differential until their 43rd day of assignment in the TDY location and only after approval is granted by the Department of State.

(4) Pay resulting from the payment of a COLA or a PD, or both, may not exceed 25 percent of the rate of basic pay. An employee eligible for a COLA is entitled to receive the full allowance established for the nonforeign area, first. If the COLA does not amount to 25 percent the employee may also be paid as much of the PD as will not cause the total additional pay to exceed 25 percent of basic pay. PD is subject to federal tax, whereas COLA is not.

**EffDte: 01/21/1999 MCRT#: 847 Div: D3

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8-13 DANGER PAY

**EffDte: 08/07/2003 MCRT#: 1292 Div: D3

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SecCls:

| 8-13.1 Authority

| Public Law 107-273 provides that the Secretary of State may
| not deny a request by the FBI to authorize a danger pay allowance
| under Title 5, United States Code, Section 5928 for any FBI employee.|

**EffDte: 08/07/2003 MCRT#: 1292 Div: D3

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| 8-13.2 Basic Requirements

| (1) Danger pay allowances may be granted because of civil
| insurrection, civil war, terrorism, or wartime conditions which
| threaten physical harm or imminent danger to the health and/or well-
| being of employees.

| (2) They are paid in the amount of 15, 20, or 25 percent of
| basic pay for FBI employees assigned on a temporary or long-term basis
| to certain foreign posts.

| (3) Danger pay may not exceed 25 percent of basic pay
| including post differential pay.|

**EffDte: 08/07/2003 MCRT#: 1292 Div: D3

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| 8-13.3 Recommendation Process

| (1) Requests for the establishment, adjustment or
| abolishment of danger pay may be submitted, in EC format, by LEGATS or
| FBI components with lead investigative responsibilities to the Office
| of International Operations (OIO) or may originate within that Office.

| (2) Sufficient information regarding the danger posed by
| the assignment to a specific post must be submitted with the request.|

**EffDte: 08/07/2003 MCRT#: 1292 Div: D3

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| 8-13.4 Composition of the Danger Pay Advisory Board (DPAB)

| (1) When a request is received, the OIO will convene a DPAB
| chaired by the Special Agent in Charge, OIO (nonvoting member).

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| (2) The Assistant Directors (ADs) of the Counterterrorism,
| Counterintelligence, Criminal Investigative, Finance, and
| Administrative Services Divisions will serve as members of this Board,
| with the ADs of Finance and Administrative Services Divisions serving
| as nonvoting members.

| (3) All three voting members must vote on each danger pay
| determination but designees may act on behalf of a voting or nonvoting
| member.

| (4) The ADs of Finance and Administrative Services
| Divisions shall ensure that danger pay allowances recommended by the
| DPAB are consistent with policy.

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| 8-13.5 Deliberations

| (1) Danger pay allowances and rates will be based on the
| level of risk at foreign locations as determined by the DPAB.

| (2) Countries at war will be considered for the highest
| allowances while countries where nonessential personnel and dependents
| are present will be considered for lesser amounts.

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| 8-13.6 Recommendation to the Director

| (1) The DPAB will recommend to the Director, in writing,
| the establishment, modification, or abolishment of danger pay
| allowances for FBI employees assigned to foreign posts (both long-term
| and temporary duty assignments.)

| (2) Estimated costs, developed by the OIO in conjunction
| with Finance Division, will be included with the recommendation to the
| Director.

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| 8-13.7 Effective Date

| New or modified danger pay allowances are effective on the
| date the Director or the Deputy Director approved the request.

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| 8-13.8 Communication of Danger Pay Changes

| (1) The Director will advise the Secretary of State when
| authorizing danger pay in new locations.

| (2) The Human Resources Officer will notify FBI offices of
| new or modified danger pay allowances.

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| 8-13.9 Procedures to Arrange Payment

| (1) Offices must prepare an EC to Administrative Services
| Division, Attention: Staffing Unit, Room 6094, requesting danger pay
| for an employee.

| (2) In the EC, provide the name of the employee, social
| security number, danger pay location, and dates of service in that
| location.

| (3) Staffing Unit will coordinate payments with the Payroll
| Administration and Processing Unit, Finance Division.

**EffDte: 08/07/2003 MCRT#: 1292 Div: D3

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| 8-14| INTEREST ON BACK PAY |(FORMERLY 8-13)|

(1) Public Law 100-202 provides for the payment of interest on back pay awards and also applies whenever an unjustified or unwarranted personnel action results in the withdrawal, reduction, or denial of pay, allowances, and differentials. A particular money amount is not withdrawn from an employee until the actual pay date on which the employee would have received it if the unjustified or unwarranted personnel action had not occurred. If the back pay payment is issued within 30 days of the actual pay date, no interest is paid. The term "unjustified or unwarranted personnel action" includes both personnel and pay actions, as well as the omission or failure to take an action or confer a benefit. For example, if through an administrative error, an employee fails to receive a within-grade increase after it has been approved by an authorized official, the employee is entitled to receive back pay and interest. Interest begins to accrue on the effective date of the withdrawal (pay

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date of the action) if the back pay is not paid within the allotted 30 days from the appropriate pay date of the action. The back pay due will be paid before the interest is calculated; however, the interest will continue to accrue until the interest accrual ends (within 30 days of the interest payment). The interest paid is based on rates established by the Secretary of the Treasury as the Interest Overpayment Rate and is compounded daily.

(2) The Internal Revenue Service has issued the following opinion on the tax treatment of interest on back pay: Interest payments are not wages for federal income tax or the Federal Insurance Contributions Act (FICA) purposes, nor are they subject to withholding of FICA tax. Therefore, the interest payment will not be included on the Wage and Tax Statement (Form W-2). A Form 1099-INT will be issued to employees receiving interest payments of \$600 or more. A notice will be supplied to each employee receiving interest payments for use in filing the payment on their annual federal income tax return.

**EffDte: 01/21/1999 MCRT#: 847 Div: D3

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8-15 SALARY ADVANCES FOR NEWLY HIRED EMPLOYEES (FORMERLY 8-14)

The Federal Employees Pay Comparability Act of 1990 (FEPCA) established the authority to grant payment of salary advances covering no more than two pay periods to newly hired employees only after specific criteria have been met.

(1) Newly hired support employees GS-10 and above - The agency is required to provide written information concerning the amount of the advance, all repayment options and recovery methods before the salary advance is granted. In addition, the employee must sign an agreement to repay the advance. An advance application will be forwarded to each eligible support employee along with their appointment letter. If a salary advance is desired, the employee will complete the application and return it to the Payroll Administration and Processing Unit (PAPU), Finance Division, for a determination of the maximum amount that can be advanced and the repayment agreement. After receipt of the signed agreement, the salary advance will be issued to the employee after they enter on duty (EOD) but before they receive their first regular salary payment. The salary advance will be repaid through payroll deduction over 13 biweekly pay periods. The employee may repay all or part of the balance at any time.

(2) Newly hired support employees Grades GS-9 and below can be advanced one salary payment in the amount of \$300. The salary advance will be repaid through payroll deduction in the amount of \$25 each pay period until repaid. The first payment will begin with the first full pay period after the employee enters on duty. An employee will not be required to sign a repayment agreement. The salary advance request will be entered into the Bureau Personnel Management System during the first week of employment for newly hired field office support employees. The salary advance request for Headquarters

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| divisions will be handled by|PAPU|personnel from the EOD class listings.

(3) The unpaid balance of the salary advance at the time of separation will be recovered by salary offset or become a debt owed to the government.

**EffDte: 11/15/2001 MCRT#: 1155 Div: D3FD Cav: SecCls:

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**EffDte: 11/15/2001 MCRT#: 1155 Div: D3FD Cav: SecCls:

| 8-17 STUDENT LOAN REPAYMENTS FOR RECRUITMENT/RETENTION PURPOSES|

**EffDte: 05/29/2002 MCRT#: 1198 Div: D3 Cav: SecCls:

| 8-17.1 Authority

| Title 5, United States Code (USC), Section 5379, and 5 Code of Federal Regulations, Part 537, authorize repayment of certain federally insured student loans to assist agencies when trying to attract individuals to the federal service or to retain highly qualified employees.|

**EffDte: 05/29/2002 MCRT#: 1198 Div: D3 Cav: SecCls:

8-17.2 Basic Requirements

(1) The FBI may repay all or part of an employee's outstanding student loan (excluding late fees) up to|\$10,000|per calendar year (and a total of|\$60,000|per employee).

(2) This authority applies to all permanent, including part-time, employees; term employees with at least three years left on their appointments; temporary employees serving on appointments leading to conversion to term or permanent appointments; and all applicants for such positions.

(3) Repayments are limited to the indebtedness outstanding at the time the employee enters into the service agreement and may be made only on federally insured student loans that are NOT currently in

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default. The level of academic degree earned or even the lack of a degree is not an eligibility factor.

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| 8-17.3 Recommendation Process

| (1) Recommendations to approve repayment of a loan should
| be made at the lowest appropriate supervisory or managerial level, but
| must generally be made by an official who is at a higher level than
| the employee who will receive the repayment benefit. All
| recommendations for payment should be submitted through the
| supervisory chain, including the division or office head, for input
| before submission to the approving official.

| (2) Recommendations for both recruitment and retention
| purposes must include:

| (a) an explanation of the difficulty the Bureau would
| face, in the absence of loan repayment, in filling the position with a
| highly qualified employee or retaining the highly qualified employee;

| (b) the criteria used to determine the amount and
| timing of repayment;

| (c) an explanation of the extent to which other
| available recruitment/retention incentives were considered or offered;
| and

| (d) verification, from the lending institution, of the
| outstanding loan balance; status of the loan, i.e., whether or not the
| loan is in default; and the lending institution's account number.

| (3) Recommendations for retention repayments must
| additionally include:

| (a) a description of the employee's high or unique
| qualifications or the special need for the employee's services;

| (b) the determination that the employee would be
| likely to leave for employment outside the federal service absent the
| loan repayment; and

| (c) a description of the extent to which the
| employee's departure would affect the FBI's ability to carry out an
| activity or perform a function that is deemed essential to its
| mission.

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| 8-17.4 Approval Process

| (1) Generally, the Personnel Officer, Personnel Management Branch, Administrative Services Division (ASD), will approve recommendations for repayment of federally insured student loans for nonattorney FBI applicants and employees.

| (a) the approving official must be at a higher level than both the applicant/employee seeking repayment and the recommending official. If either of these are at the Deputy Assistant Director level or above, the approving official will be the Assistant Director, ASD, or such higher level official as is necessary to satisfy this requirement.

| (b) the approval authority for FBI attorney applicants and employees will generally be the General Counsel.

| (2) All requests for repayment of student loans will be reviewed by the Finance Division (FD), prior to approval, to ensure availability of funds.

| (3) The approving official will ensure that the applicant/employee selection process for loan repayment benefits is consistent with the merit system principles in Title 5, USC, Section 2301, and will consider the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented.

| (4) A determination made for recruitment purposes must be approved before the employee enters on duty in the position.

| (5) When determining whether a student loan should be repaid, and the amount and timing of any such repayment, the approving official will consider the information submitted by the recommending official and the following factors, as applicable:

| (a) the applicant's/employee's qualifications;

| (b) funds available (or expected to be available) for repayment;

| (c) the minimum repayment needed to ensure the acquisition or retention of the employee's services;

| (d) the success of recent efforts to recruit candidates with qualifications similar to those possessed by the applicant/employee or for similar positions;

| (e) the availability in the labor market of candidates for employment who, with minimal training or disruption of mission accomplishment, can perform the full range of duties and responsibilities of the position;

| (f) the relative advantages and disadvantages (for both the FBI and the applicant/employee) of repaying student loans

| rather than any other recruitment or retention incentive; and

| (g) the applicant's/employee's preferences with
| respect to whether the payments should be spread out over more than
| one tax year.|

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| 8-17.5 Notification Procedures

| (1) The approving official will notify the
| applicant/employee and recommending office in writing whether the
| request for repayment has been approved. If the repayment is
| approved, this written notification will include the service agreement
| for the applicant's/employee's signature.

| (2) If additional loan repayment is recommended, after the
| agreed period of service is completed, the employee and the office
| will be notified whether or not the recommendation is approved, but
| another service agreement is not required.|

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| 8-17.6 Service Agreement

| (1) The applicant/employee and the approving official must
| enter into the service agreement which must, by federal law, provide
| for not less than three years of service.

| (2) The student loan service agreement will run
| concurrently with a service agreement required for other purposes,
| such as for a recruitment or relocation bonus.

| (3) The three-year period of service begins on the date of
| the first payment.|

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| 8-17.7 Payment Procedures

| (1) Upon approval of the request to repay an
| applicant's/employee's student loan, the FD will process the payment
| in a lump-sum amount. The lump-sum payment, after applicable taxes
| are deducted, will be issued to the lending institution through
| electronic funds transfer.

| (2) The FBI is required to apply the following on any loan
| repayment:

| (a) pay the employer's share of social security and
| Medicare taxes;

| (b) withhold and pay appropriate federal, state, and
| local income tax withholding; and

| (c) withhold and pay the employee's share of social
| security and Medicare taxes. |

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| 8-17.8 Repayment Requirements

| (1) An employee who moves from the FBI to another DOJ
| component during the term of the agreement will cease to be eligible
| for loan repayments but will not be required to reimburse the FBI for
| loan repayments already made. The gaining component may enter into a
| new loan repayment agreement with the employee.

| (2) If an employee voluntarily separates from the DOJ,
| transfers to another federal agency, or is involuntarily separated
| because of performance or misconduct before completing the agreed
| period of service, the employee must reimburse the FBI for all
| repayment benefits received.

| (3) In such a case, the Payroll Administration and
| Processing Unit (PAPU), FD, must be notified immediately that the
| employee is separating. The PAPU, FD, will contact the employee to
| arrange repayment.

| (4) If the employee does not repay these benefits
| voluntarily, the PAPU, FD, will initiate recovery of the student loan
| repayment through administrative offset. If offset is initiated, the
| employee will be entitled to a hearing (this may be a "paper hearing"
| or an oral hearing depending on the circumstances). The right of
| recovery of an employee's debt may be waived in whole or in part if a
| determination is made that recovery would be against equity and good
| conscience or against the public interest.

| (5) Any amount repaid, or recovered, from an employee will
| be credited to the appropriation account from which the loan repayment
| was originally paid. Any amount so credited will be merged with other
| sums in that account and will be available for the same purposes and
| period, and subject to the same limitations (if any), as the sums with
| which merged. |

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| 8-17.9 Documentation Requirement

| Written documentation for each determination to repay a
| student loan will be maintained in the Staffing Unit, ASD. Since the
| completed service agreement will be filed in the employee's Official
| Personnel File, a copy of the completed service agreement will be
| maintained in the Staffing Unit. This documentation will be available
| for review by the DOJ or Office of Personnel Management. |

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| 8-17.10 Annual Report

| (1) The Staffing Unit, ASD, will prepare an annual report
| to the DOJ on the FBI's use of the repayment authority. The reports
| will be submitted to the Director, Personnel Staff, Justice Management
| Division, DOJ, no later than November 15th of each year, covering the
| preceding fiscal year.

| (2) This report must include the following:

| (a) a narrative discussion of the situations for which
| repayments were made;

| (b) the effectiveness of the repayment authority; and

| (c) any recommendations for improving the use of the
| authority in terms of both regulatory change and Department
| requirements and flexibilities.

| (3) The annual report will also include, for each employee
| who received repayment benefits during the preceding fiscal year, the
| following information:

| (a) whether the repayment was for purposes of
| recruitment or retention;

| (b) amount repaid during the fiscal year (before
| withholding);

| (c) amounts to be repaid in future fiscal years
| (before withholding);

| (d) employee's position title, job series, pay plan,
| grade, and geographical area (city and state, or country); and

| (e) length of the service agreement. |

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